



MASTER CONTRACT

No. 01520

FRESH BAKERY ITEMS

For Use by Eligible Purchasers

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

United States Bakery dba Franz Family Bakeries

Dated April 1, 2021

MASTER CONTRACT

No. 01520

FRESH BAKERY ITEMS

This Master Contract ("Master Contract") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and United States Bakery dba Franz Family Bakeries, an Oregon company ("Contractor") and is dated and effective as of April 1, 2021.

RECITALS

- A. Pursuant to Legislative direction codified in RCW chapter 39.26, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish master contracts for goods and/or services for general use by Washington state agencies and certain other entities (eligible purchasers).
- B. The State of Washington, through various state agencies is entrusted with the care of individuals, including the provision of meals. These state agencies purchase goods and services, including Fresh Bakery Items, to perform their mission. This Master Contract is designed to provide a competitively solicited and awarded procurement solution for such agencies and other eligible purchasers, including, for example, school districts, to efficiently and cost-effectively purchase Fresh Bakery Items.
- C. On behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued Competitive Solicitation No. 01520 dated December 23, 2020. The Competitive Solicitation was structured to meet purchaser needs and designed to result in an award of a single Master Contract with differential pricing for Eastern and Western Washington to align with anticipated Purchaser orders and Contractor costs.
- D. Enterprise Services evaluated all responses to the Competitive Solicitation and identified Contractor as the apparent successful bidder.
- E. Enterprise Services has determined that entering into this Master Contract will meet the identified needs and be in the best interest of the State of Washington.
- F. The purpose of this Master Contract is to enable eligible purchasers to purchase the goods and services as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **TERM.** The term of this Master Contract is twenty four (24) months, commencing April 1, 2021 and ending March 31, 2023. Provided that Contractor is not in default and is satisfactorily performing this Master Contract, Enterprise Services may extend the term of the Master Contract, by written amendment, for up to forty eight (48) additional months.

2. ELIGIBLE PURCHASERS. This Master Contract may be utilized by any of the following types of entities (“Purchaser”):

- 2.1. WASHINGTON STATE AGENCIES. All Washington state agencies, departments, offices, divisions, boards, and commissions.
- 2.2. WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES). Any the following institutions of higher education in Washington:
 - State universities – i.e., University of Washington & Washington State University;
 - Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University
 - Evergreen State College;
 - Community colleges; and
 - Technical colleges.
- 2.3. MCUA PARTIES. Any of the following types of entities that have executed a Master Contract Usage Agreement with Enterprise Services:
 - Political subdivisions (e.g., counties, cities, school districts, public utility districts) in the State of Washington;
 - Federal governmental agencies or entities;
 - Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
 - Federally-recognized Indian Tribes located in the State of Washington.

3. SCOPE – INCLUDED GOODS/SERVICES AND PRICE.

- 3.1. CONTRACT SCOPE. Pursuant to this Master Contract, Contractor is authorized to sell Fresh Bakery Items, or similar, as set forth in *Exhibit A – Included Goods/Services* for the prices set forth in *Exhibit B – Prices for Goods/Services*. Contractor shall not represent to any Purchaser under this Master Contract that Contractor has contractual authority to sell any goods and/or services beyond those set forth in *Exhibit B – Prices for Goods/Services*. The parties intend that this Master Contract may include Contractor’s full catalog of fresh baked items offered for retail sale. In the event that eligible Purchasers desire to add items that were not originally listed on *Exhibit B – Prices for Goods/Services*, and the items qualify as Fresh Baked Items, Enterprise Services and Contractor upon mutual agreement of price may add said items to *Exhibit B – Prices for Goods/Services*. In such event, Contractor shall coordinate with Enterprise Services to establish Master Contract pricing for such items; provided, however, that such pricing must be consistent with the pricing set forth in *Exhibit B – Prices for Goods/Services*.
- 3.2. STATE’S ABILITY TO MODIFY SCOPE OF MASTER CONTRACT. Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the goods and/or services included in this Master Contract; *Provided*, however, that any such modification shall be effective only upon thirty (30) days advance written notice; and *Provided further*, that any such modification must be within the scope of this Master Contract.
- 3.3. ECONOMIC ADJUSTMENT. The Contract Prices set forth herein are firm and fixed for one year from the effective date of this Master Contract. Beginning twelve (12) months after the effective date of this Master Contract and for every annual anniversary thereafter, Contractor

may request an annual price adjustment. Requests for price adjustments must be made in writing and be received at least thirty (30) days prior to the adjustment date (the annual anniversary of the effective date of the Master Contract). In the event Contractor fails to timely request a price adjustment, Enterprise Services, at its sole discretion, may allow an untimely adjustment; *Provided*, however, that such adjustment will not be effective for any time prior to Enterprise Services' price adjustment. Price adjustments will be made in accordance with the percentage change in the United States Department of Labor, Bureau of Labor and Statistics (BLS) Produce Price Index (PPI), WPU021102, issued for each contract term. The percentage difference between the PPI issued for the last time the contract was adjusted and the PPI issued at the time of adjustment will determine the maximum allowable adjustment of original contract prices. The economic adjustment shall be calculated as follows:

$$\text{New Price} = \text{Old Price} \times (\text{Current Period Index} / \text{Base Period Index}).$$

Only final PPI data will be used to adjust contract pricing. This Master Contract will use seasonally unadjusted indexes. If an index becomes unavailable, Enterprise Services shall substitute a proxy index. If there is not a direct substitute, the next higher aggregate index available will be used.

- 3.4. **PRICE CEILING.** Although Contractor may offer lower prices to Purchasers, during the term of this Master Contract, Contractor guarantees to provide the Goods/Services at no greater than the prices set forth in *Exhibit B – Prices for Goods/Services* (subject to economic adjustment as set forth herein).
- 3.5. **MASTER CONTRACT INFORMATION.** Enterprise Services shall maintain and provide information regarding this Master Contract, including scope and pricing, to eligible Purchasers.

4. CONTRACTOR REPRESENTATIONS AND WARRANTIES. Contractor makes each of the following representations and warranties as of the effective date of this Master Contract and at the time any order is placed pursuant to this Master Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

- 4.1. **QUALIFIED TO DO BUSINESS.** Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington, that it is registered with the Washington State Department of Revenue and the Washington Secretary of State, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
- 4.2. **SUSPENSION & DEBARMENT.** Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.
- 4.3. **QUALITY OF GOODS OR SERVICES.** Contractor represents and warrants that any Fresh Bakery Items sold pursuant to this Master Contract shall be merchantable, shall conform to this Master Contract and Purchaser's Purchase Order, shall be fit and safe for human consumption, shall be properly and accurately packaged and labeled, and shall be produced and delivered in full compliance with applicable law. Contractor further represents and warrants it has clear title to the goods and that the same shall be delivered free of liens and encumbrances and that the same do not infringe any third party patent. Upon breach of warranty, Contractor will

- replace (at no charge to Purchaser) any Fresh Bakery Items whose nonconformance is discovered and made known to the Contractor. If, in Purchaser's judgment, replacement is inadequate, or fails of its essential purpose, Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.
- 4.4. **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Master Contract and the three (3) year period immediately preceding the award of the Master Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- 4.5. **PAY EQUALITY.** Contractor represents and warrants that, among its workers, similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Master Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Master Contract and/or any agreement entered into pursuant to this Master Contract.
- 4.6. **EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS.** Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
- 4.7. **REQUIRED LICENSES/CERTIFICATION.** Contractor represents and warrants, as previously certified in Contractor's bidder certification, that it possesses all required licenses and meets or exceeds the applicable license requirements set forth in applicable federal and state law.
- 4.8. **PROCUREMENT ETHICS & PROHIBITION ON GIFTS.** Contractor represents and warrants that it complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Purchasers' employees.

- 4.9. FEDERAL LOBBYING – BYRD ANTI-LOBBYING AMENDMENT. Contractor represents and warrants, as previously certified in Contractor’s Bidder Certification, that Contractor complies with the federal Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.].
- 4.10. BUY AMERICAN. Contractor represents and warrants, as previously certified in Contractor’s Bidder Certification that, upon request by Eligible Purchasers, Contractor shall offer, as part of its product catalog, Fresh Bakery Items that satisfy the federal ‘Buy American’ requirement and all associated USDA policy memorandums. Accordingly, Contractor shall provide for purchase and certify that such Fresh Bakery Items are processed in the U.S. and contain over 51% of its agricultural food component, by weight or volume, from the U.S. in accordance with section 12(n) of the National School Lunch Act and the implementing regulations. See 42 USC § 1760(n); and 7 CFR § 210.21(d).
- 4.11. DELIVERIES TO SCHOOLS – CONTRACTOR EMPLOYEES. Contractor represents and warrants, as previously certified in Contractor’s Bidder Certification, that, for any deliveries to schools, no such deliveries shall be performed by any Contractor personnel whose Contractor, upon reasonable inquiry and investigation, has reason to know has pled guilty to or been convicted of any felony crime specified under RCW 28A.400.322 (crimes against children).
- 4.12. WASHINGTON’S ELECTRONIC BUSINESS SOLUTION (WEBS). Contractor represents and warrants that it is registered in Washington’s Electronic Business Solution (WEBS), Washington’s contract registration system and that, all of its information therein is current and accurate and that throughout the term of this Master Contract, Contractor shall maintain an accurate profile in WEBS.
- 4.13. STATEWIDE PAYEE DESK. Contractor represents and warrants that it is registered with the Statewide Payee Desk, which registration is a condition to payment.
- 4.14. MASTER CONTRACT PROMOTION; ADVERTISING AND ENDORSEMENT. Contractor represents and warrants that it shall use commercially reasonable efforts both to promote and market the use of this Master Contract with eligible Purchasers and to ensure that those entities that utilize this Master Contract are eligible Purchasers. Contractor understands and acknowledges that neither Enterprise Services nor Purchasers are endorsing Contractor’s goods and/or services or suggesting that such goods and/or services are the best or only solution to their needs. Accordingly, Contractor represents and warrants that it shall make no reference to Enterprise Services, any Purchaser, or the State of Washington in any promotional material without the prior written consent of Enterprise Services.
- 4.15. MASTER CONTRACT TRANSITION. Contractor represents and warrants that, in the event this Master Contract or a similar contract, is transitioned to another contractor (e.g., Master Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.

5. USING THE MASTER CONTRACT – PURCHASES.

- 5.1. ORDERING REQUIREMENTS. Eligible Purchasers shall order goods and/or services from this Master Contract, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchaser but, at a minimum, including the use of a purchase order. When practicable, Contractor and Purchaser also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively “Purchaser Order”). All order documents must reference the Master Contract number. The terms of this Master Contract shall apply to any Purchase Order and, in the event of any conflict, the terms of this Master Contract shall prevail. Notwithstanding any provision to the contrary, in no event shall any ‘click-agreement,’ software or web-based application terms and conditions, or other agreement modify the terms and conditions of this Master Contract.
- 5.2. CONTRACTOR’S ORDERING PORTALS. Contractor, at a minimum, shall provide, at no additional cost or expense to Eligible Purchasers, the following ordering portals to order Fresh Bakery Items from this Master Contract:
- (a) EMAIL: Contractor shall provide an email address for orders. Contractor must respond, within 24 hours, to orders placed by email.
 - (b) TELEPHONE: Contractor shall provide a toll free telephone number for orders. Such Telephone number must be in service between the hours of 6AM to 6PM Pacific Time Monday thru Friday.
 - (c) ONLINE PRICING WEBSITE: Contractor shall maintain and provide an online website and, if available, mobile application (collectively ‘website’) displaying current pricing for Fresh Bakery Items available through this Master Contract. Such website shall be specific to this Master Contract and limited to Fresh Bakery Items, and the pricing for such that is required pursuant to this Master Contract. When applicable, such website also shall identify Washington grown products. Contractor’s website design must provide for efficient use by Eligible Purchasers. In addition, Contractor’s website also must provide an archive of all pricing during the term of this Master Contract.
- 5.3. DELIVERY REQUIREMENTS. Contractor must ensure that delivery of Fresh Bakery Items will be made as required by this Master Contract, the Purchase Order used by Purchasers, or as otherwise mutually agreed in writing between the Purchaser and Contractor. The following apply to all deliveries:
- (a) Contractor shall make all deliveries to the applicable delivery location specified in the Purchase Order. Such deliveries shall within the time period mutually agreed in writing between Purchaser and Contractor.
 - (b) Contractor shall ship and deliver all Fresh Bakery Items purchased pursuant to this Master Contract, freight charges prepaid by Contractor, FOB Purchaser’s specified destination with all transportation and handling charges included. Contractor shall bear all risk of loss, damage, or destruction of the Fresh Bakery Items ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchaser’s negligence.
 - (c) All items must be delivered free of damage, with all packaging and packing intact. All deliveries must be palletized, labeled with name of receiving location, and wrapped in clear wrap. Refrigerated items, and non-refrigerated items are to be palletized separately. Pallets will not exceed five feet in height. Contractor’s

delivery person(s) will be responsible for unloading. Any items that are delivered short, damaged, or in error from the order will be Contractor's responsibility and, unless otherwise agreed, shall be replaced within twenty-four hours. Contractor shall remove all excess pallets used for delivery from the delivery point. The invoice must list all items delivered.

- (d) Delivery trucks must be clearly identified and maintain items at the appropriate temperature during transportation and delivery, as required by industry standards.
- (e) Delivery frequencies will vary by Eligible Purchaser. Contractor shall work with Eligible Purchasers to establish mutually agreeable delivery schedules.
- (f) All Fresh Bakery Items sold and delivered pursuant to this Master Contract must meet or exceed minimum standards or Contractor shall replace the item(s) within twenty-four (24) hours or provide a credit, whichever the Purchaser prefers.

5.4. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. Fresh Bakery Items purchased under this Master Contract are subject to Purchaser's reasonable inspection and approval at Purchaser's destination.

- (a) Purchaser's authorized receiving official at each delivery point is responsible for inspecting and accepting deliveries. Unless otherwise agreed to in writing between Purchaser and Contractor, Purchaser shall not sign for deliveries/invoice prior to Purchaser's inspection of the delivered Fresh Bakery Items. Purchaser's receiving official shall document and sign the delivery ticket/invoice as the shipment is being made but before the delivery truck leaves Purchaser's premises. All overages/shortages/returns are to be noted on the delivery ticket by Purchaser's receiving official and Contractor's delivery personnel. A signature on the delivery ticket/invoice denotes acceptance of the delivered Fresh Bakery Items.
- (b) Contractor shall provide three (3) copies of the delivery ticket/invoice to Purchaser's receiving official with the delivery of the Fresh Bakery Items. Purchaser's receiving official will use the delivery ticket/invoice as the receipt document. Two (2) copies of the signed and annotated delivery ticket/invoice will serve as the acceptance document. No invoice may be submitted for payment until acceptance is verified.
- (c) Late deliveries or deliveries that cannot be made within the above guidelines may be canceled by Purchaser at no cost to Purchaser.
- (d) Purchaser may reject non-conforming Fresh Bakery Items at Contractor's expense. Purchaser reserves the right to reject and refuse acceptance of Fresh Bakery Items that are not in accordance with this Master Contract and Purchaser's Purchase Order.

5.5. PACKAGING, LABELING, & SHIPPING.

- (a) PACKAGING: Contractor shall package s in accordance with good commercial practice. At a minimum, Contractor shall package Fresh Bakery Items in transparent plastic bags. Such packaging shall not contain any type of wire twist tie closure.

- (b) FRESHNESS. Contractor shall include a clear, legible, and easy to understand freshness date code on each package including both the 'bake date' and the 'best if used by date' for the contents. Contractor may color code the packages to indicate the date such item was baked, provided that Contractor provides Purchasers with the color codes for such bake dates.
- (c) NUTRITIONAL & INGREDIENT INFORMATION. Contractor, to the maximum extent possible or when requested by Purchaser, shall place nutritional and ingredient labels on the product packaging for Fresh Bakery Items. Notwithstanding any provision to the contrary, upon request by any Purchaser (e.g., school nutrition director), Contractor shall provide the most recent nutritional data, meal contributions, and ingredient labels in a format specified by the Office of the Superintendent of Public Instruction or the applicable school district. This information must be provided no later than seven (7) calendar days from the date of request.
- (d) LABELING: Contractor shall label Fresh Bakery Items in accordance with national UPC bar coding complying with the Federal Food, Drug and Cosmetic Act and regulation promulgated there under. USDA nutritional labels shall be included on products delivered to institutions requesting this labeling (such labeling is mandatory for purchasers receiving National School Lunch Program reimbursement).
- (e) SHIPPING: Contractor shall ship/delivery Fresh Bakery Items in accordance with good commercial practice. Shipping containers shall be in compliance with the National Motor Freight Classification and Uniform Freight Classification Code. Semi-perishable items shall be packed in shipping containers that fully comply with the National Motor Freight Classification and Uniform Freight Classification Code, as applicable. o ensure that the carrier and the receiving activity properly handle and store items, standard commercial precautionary markings, such as "KEEP REFRIGERATED", etc. shall be used on all cases when appropriate.
- (f) MASTER CONTRACT NUMBER IDENTIFIER: All packing lists, packages, shipping notices, shipping containers, correspondence, and other written materials associated with this Master Contract shall be identified by the Master Contract number set forth on the cover of this Master Contract and the applicable Purchaser's Purchase Order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.

5.6. CONTRACTOR'S QUALITY CONTROL PROGRAM. Contractor shall guarantee the freshness and quality of its Fresh Bakery Items delivered to Purchasers.

- (a) SANITARY APPROVED SOURCE REQUIREMENTS. Contractor shall ensure that all Fresh Bakery Items sold and delivered pursuant to this Master Contract originate from an establishment which has been inspected under the guidance of the United States Department of Commerce or the United States Department of Agriculture.
- (b) WAREHOUSING AND SANITATION PROGRAM. Contractor shall develop and maintain a sanitation program to comply, with the Code of Federal Regulation, Title 21 Part 110 and other applicable federal, state, or local standards. Records of inspections performed by the Contractor, subcontractor, or recognized industry association shall be maintained and made available at Enterprise Services' request. Any

findings by the Contractor or its agent documenting a critical sanitation deficiency shall be reported immediately to Enterprise Services with an attached report of corrective action.

- (c) STORED PRODUCTS PEST MANAGEMENT PROGRAM. Contractor shall develop and maintain a stored products pest management program for all Fresh Bakery Items sold pursuant to this Master Contract. Accepted industry standards for pest management shall include, but are not limited to, the Code of Federal Regulations, Title 21, part 110, Food Manufacturing Practices, the Federal Insecticide, Fungicide and Rodenticide Act (as amended), the Food, Drug, and Cosmetic Act of 1938, and pertinent federal, state, and local laws and regulations.
- (d) HAZARD ANALYSIS CRITICAL CONTROL POINT (HACCP). Contractor shall maintain HACCP procedures applicable to Fresh Bakery Items. Upon request by Enterprise Services or any Purchaser, Contractor shall provide such HACCP procedures.
- (e) CONTRACTOR QUALITY SYSTEM AND MANAGEMENT VISITS. Enterprise Services and/or its designated representative may conduct Contractor quality and management visits to review Contractor's methods to verify compliance with the terms of this Master Contract. Such visits also will ensure that the quality level of the Fresh Bakery Items meet the requirements of this Master Contract. Such visits may include on-site visits to subcontractors and/or Contractor's suppliers. Contractor shall make all arrangements for visits by Enterprise Services' designated personnel to Contractor, subcontractors, and suppliers. Enterprise Services shall provide a visit agenda and schedule at least two (2) business days prior to any visit. Enterprise Services will forward a report detailing any issues requiring corrective action or other adjustments.

5.7. QUALITY CONTROL – PURCHASER REJECTION OF FRESH BAKERY ITEMS. Purchaser may reject Fresh Bakery Items that do not meet acceptable quality. Reasons for rejection include, but are not limited to, the following:

- Item does not meet minimum quality requirements (e.g., contents, freshness)
- Item does not meet shelf life requirements
- Item damaged in shipment
- Item has concealed or latent damage
- Item transported/delivered in unsanitary or inappropriate delivery vehicle
- Item is recalled
- Items shipped due to Contractor error

5.8. REJECTION PROCEDURES. In the event that Purchaser determines that any Fresh Bakery Item is defective, damaged, or compromised in any manner, Purchaser may reject such Fresh Baker Item(s).

- (a) When any Fresh Bakery Item is found to be nonconforming or damaged, Purchaser will determine the course of action to be taken with the item in question. The final decision rests with the Purchaser. For unauthorized substitutions, Purchaser will determine whether to reject or accept such Fresh Bakery Items. If accepted, Purchaser reserves the right to pay Contractor only that amount allotted for the original item ordered. Fresh Bakery Items

transported in vehicles that are not sanitary or equipped to maintain industry standard temperatures, may be rejected without further inspection.

- (b) In the event Purchaser rejects an item, the delivery ticket/invoice shall be annotated as to the item(s) rejected. These items shall then be deducted from the delivery ticket/invoice. The invoice total must be adjusted to reflect the correct dollar value of the shipment. Replacements will be authorized based on Purchaser needs. To the greatest extent possible, on an as-needed emergency basis, same day re-delivery of items that were previously rejected shall be made, so that food service requirements do not go unfulfilled for that day. The re-delivered items will be re-delivered under a separate invoice, utilizing the same purchase order number for the discrepant line. These re-deliveries will not constitute an emergency or supplemental requirement, and therefore, will have no additional charges.
- (c) In the event Purchaser rejects an item after initial delivery has been made, Contractor will pick up the rejected item or instruct Purchaser to dispose of the same. If Contractor fails to pick up the rejected items within five calendar days, Purchaser shall dispose the item with no payment to Contractor. Credit due to Purchaser as a result of the rejected item being returned, will be handled through a receipts adjustment process in the ordering system. If Contractor has already been paid for the item, a credit will be issued to Purchaser. Contractor shall issue a refund within ten (10) business days.
- (d) If a Purchaser requires a one-to-one replacement, no additional paper work is necessary. The Contractor delivery ticket/invoice will show that such item is a replacement for a rejected item. The invoice shall reference the Purchase Order Number of the originally ordered item. In addition, a copy of the credit memo from any returned item is to be attached to the invoice.

5.9. ON SITE REQUIREMENTS. While on Purchaser's premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchaser's physical, fire, access, safety, and other security requirements. Without limiting the generality of the preceding sentence, the following requirements are provided to help inform Contractor's obligations regarding specific Purchasers which Contractor and Purchaser should address in site-specific delivery instructions and requirements if such eligible Purchasers utilize this Master Contract:

- (a) SECURE & SIMILAR FACILITIES: Washington State law prohibits a person from bringing any contraband (e.g., narcotic substances, alcohol, weapons) onto the premises of any Washington State Department of Corrections or Washington State Department of Social and Health Services (DSHS) Juvenile Facilities, Correctional Institution or Mental Health Division facility. *See, e.g.,* WAC 275-80-805, WAC 275-80-900, RCW 72.05.130. Although DSHS institutions for the developmentally disabled are not considered "secure," the State of Washington intends to protect the interests and welfare of all institutionalized residents entrusted to its care. Accordingly, the provisions set forth herein also apply to DSHS institutions for the developmentally disabled.
- (b) SECURITY CLEARANCES: Contractor is required be informed and to arrange for personnel to deliver to Purchasers who have special security, background check, or other delivery personnel requirements. Contractor also is responsible to have

sufficient personnel to rotate drivers for deliveries at secured institutions. Contractor representatives and drivers must produce satisfactory personal identification upon request at the institution. The identification presented must match the pre-approved identification that will be provided by the Contractor to the Purchaser.

- (c) **TERMINATION FOR VIOLATION:** Any unauthorized introduction of any contraband onto the premises of any Washington State institution by Contractor, or a contractor employee may result in the immediate cancellation of this Master Contract.

6. INVOICING & PAYMENT.

- 6.1. **CONTRACTOR INVOICE.** Contractor shall submit to Purchaser's designated invoicing contact properly itemized invoices. Such invoices shall itemize the following:
 - (a) Master Contract No. 01520
 - (b) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative)
 - (c) Contractor's Federal Tax Identification Number
 - (d) Date(s) of delivery
 - (e) Invoice amount; and
 - (f) Payment terms, including any available prompt payment discounts.

Contractor's invoices for payment shall reflect accurate Master Contract prices. Invoices will not be processed for payment until receipt of a complete invoice as specified herein.

- 6.2. **PAYMENT.** Payment is the sole responsibility of, and will be made by, the Purchaser. Payment is due within thirty (30) days of invoice. If Purchaser fails to make timely payment(s), Contractor may invoice Purchaser in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.
- 6.3. **OVERPAYMENTS.** Contractor promptly shall refund to Purchaser the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) days of written notice to Contractor; *Provided*, however, that Purchaser shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, Purchaser may impose a one percent (1%) per month on the amount overdue thirty (30) days after notice to the Contractor.
- 6.4. **NO ADVANCE PAYMENT.** No advance payments shall be made for any products or services furnished by Contractor pursuant to this Master Contract.
- 6.5. **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, or payment processing.
- 6.6. **TAXES/FEES.** Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Master Contract. Failure to do so shall constitute breach of this Master Contract. Unless otherwise agreed, Purchaser shall pay applicable sales tax imposed by the State of Washington on purchased goods and/or services. Contractor, however, shall not

make any charge for federal excise taxes and Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

7. CONTRACT MANAGEMENT.

- 7.1. **CONTRACT ADMINISTRATION & NOTICES.** Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of this Master Contract. Enterprise Services' contract administrator shall provide Master Contract oversight. Contractor's contract administrator shall be Contractor's principal contact for business activities under this Master Contract. The parties may change contractor administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services

Attn: Clayton Long
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360) 407-8508
Email: clayton.long@des.wa.gov

Contractor

Attn: Todd Fultz
United States Bakery
dba Franz Family Bakeries
2901 6th Ave S
Seattle, WA 98134
Tel: (206) 383-7026
Email: Todd.Fultz@usbakery.com

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 7.2. **CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE.** Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Purchaser issues pertaining to this Master Contract.
- 7.3. **LEGAL NOTICES.** Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services

Attn: Legal Services Manager
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Email: greg.tolbert@des.wa.gov

Contractor

Attn: Todd Fultz
United States Bakery
dba Franz Family Bakeries
2901 6th Ave S
Seattle, WA 98134
Email: Todd.Fultz@usbakery.com

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

8. CONTRACTOR SALES REPORTING; VENDOR MANAGEMENT FEE; & CONTRACTOR REPORTS.

8.1. **MASTER CONTRACT SALES REPORTING.** Contractor shall report total Master Contract sales quarterly to Enterprise Services, as set forth below.

- (a) **Master Contract Sales Reporting System.** Contractor shall report quarterly Master Contract sales in Enterprise Services' Master Contract Sales Reporting System. Enterprise Services will provide Contractor with a login password and a vendor number. The password and vendor number will be provided to the Sales Reporting Representative(s) listed on Contractor's Bidder Profile.
- (b) **Data.** Each sales report must identify every authorized Purchaser by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasers specified herein during the term of the Master Contract. If there are no Master Contract sales during the reporting period, Contractor must report zero sales.
- (c) **Due dates for Master Contract Sales Reporting.** Quarterly Master Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

Sales Made	Report Due By	Report Past Due
January 1 – March 31	April 30	May 1
April 1 – June 30	July 31	August 1
July 1 – September 30	October 31	November 1
October 1 – December 31	January 31	February 1

8.2. **VENDOR MANAGEMENT FEE.** Contractor shall pay to Enterprise Services a vendor management fee ("VMF") of 1.5 percent on the purchase price for all Master Contract sales (the purchase price is the total invoice price less applicable sales tax).

- (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:
$$\text{Amount owed to Enterprise Services} = \text{Total Master Contract sales invoiced (not including sales tax)} \times .015.$$
- (b) The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
- (c) Enterprise Services will invoice Contractor quarterly based on Master Contract sales reported by Contractor. Contractors are not to remit payment until they receive an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference this Master Contract number, work request number (if applicable), the year and quarter for which the VMF is being remitted, and the Contractor's name as set forth in this Master Contract, if not already included on the face of the check.
- (d) Failure to accurately report total net sales, to submit a timely usage report, or remit timely payment of the VMF, may be cause for Master Contract suspension or termination or the exercise of other remedies provided by law. Without

limiting any other available remedies, the Parties agree that Contractor's failure to remit to Enterprise Services timely payment of the VMF shall obligate Contractor to pay to Enterprise Services, to offset the administrative and transaction costs incurred by the State to identify, process, and collect such sums, the sum of \$200.00 or twenty-five percent (25%) of the outstanding amount, whichever is greater, or the maximum allowed by law, if less.

- (e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases, and reserves the right to renegotiate Master Contract pricing with Contractor when any subsequent adjustment of the VMF might justify a change in pricing.

- 8.3. ANNUAL MASTER CONTRACT SALES REPORT. Contractor shall provide to Enterprise Services a detailed annual Master Contract sales report. Such report shall include, at a minimum:
- Contactor's total annual sales of Fresh Baked Items, by unique item, pursuant to this Master Contract;
 - Contactor's total annual sales of Fresh Baked Items, by Purchaser, pursuant to this Master Contract (Contractor shall provide such Purchaser detail on an aggregated basis, by Purchaser, as well as by site-specific Purchaser location);
 - The percentage, by Purchaser location, of rejected items;
 - Fresh Baked Items, if any, requested by Purchasers that were not in Contractor's current catalog of Fresh Baked Items; and
 - The Master Contract price charged for each unique item sold pursuant to this Master Contract.

This report must be provided to Enterprise Services in an electronic format that can be read by Microsoft (MS) Excel.

9. RECORDS RETENTION & AUDITS.

- 9.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Contract and orders placed by Purchasers under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Master Contract or final payment for any order placed by a Purchaser against this Master Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 9.2. AUDIT. Enterprise Services reserves the right to audit, or have a designated third party audit, applicable records to ensure that Contractor has properly invoiced Purchasers and that Contractor has paid all applicable vendor management fees. Accordingly, Contractor shall permit Enterprise Services, any Purchaser, and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Contract or orders placed by a Purchaser under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Master Contract or final payment for any order placed by a Purchaser against this Master Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

- 9.3. OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES. Without limiting any other remedy available to any Purchaser, Contractor shall (a) reimburse Purchasers for any overpayments inconsistent with the terms of this Master Contract or orders, at a rate of 125% of such overpayments, found as a result of the examination of the Contractor's records; and (b) reimburse Enterprise Services for any underpayment of fees, at a rate of 125% of such fees found as a result of the examination of the Contractor's records (e.g., if Contractor underpays the Vendor Management Fee by \$500, Contractor would be required to pay to Enterprise Services $\$500 \times 1.25 = \625).

10. INSURANCE.

- 10.1. REQUIRED INSURANCE. During the Term of this Master Contract, Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C – Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for goods/services and no additional payment shall be made.
- 10.2. WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Enterprise Services may terminate this Master Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. In addition, Contractor waives its immunity under RCW Title 51 to the extent it is required to indemnify, defend, and hold harmless the State of Washington and its agencies, officials, agents, or employees.

11. CLAIMS.

- 11.1. ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with its operations under this Master Contract. Enterprise Services has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any Purchaser's property resulting directly or indirectly from its acts or omissions under this Master Contract, even if not attributable to negligence by Contractor or its agents.
- 11.2. THIRD-PARTY CLAIMS; INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless Enterprise Services and any Purchaser and their employees and agents from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any act or omission of Contractor or its successors, agents, and subcontractors under this Master Contract, except claims caused solely by Enterprise Services or any Purchasers' negligence. Contractor shall take all steps needed to keep Purchaser's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.

12. DISPUTE RESOLUTION. The parties shall cooperate to resolve any dispute pertaining to this Master Contract efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days

shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

13. SUSPENSION & TERMINATION; REMEDIES.

13.1. **SUSPENSION & TERMINATION FOR DEFAULT.** Enterprise Services may suspend Contractor's operations under this Master Contract immediately by written cure notice of any default. Suspension shall continue until the default is remedied to Enterprise Services' reasonable satisfaction; *Provided*, however, that, if after thirty (30) days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's rights under this Master Contract. All of Contractor's obligations to Enterprise Services and Purchasers survive termination of Contractor's rights under this Master Contract, until such obligations have been fulfilled.

13.2. **DEFAULT.** Each of the following events shall constitute default of this Master Contract by Contractor:

- (a) Contractor fails to perform or comply with any of the terms or conditions of this Master Contract including, but not limited to, Contractor's obligation to pay vendor management fees when due;
- (b) Contractor breaches any representation or warranty provided herein; or
- (c) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.

13.3. **REMEDIES FOR DEFAULT.**

- (a) Enterprise Services' rights to suspend and terminate Contractor's rights under this Master Contract are in addition to all other available remedies.
- (b) In the event of termination for default, Enterprise Services may exercise any remedy provided by law including, without limitation, the right to procure for all Purchasers replacement goods and/or services. In such event, Contractor shall be liable to Enterprise Services for damages as authorized by law including, but not limited to, any price difference between the Master Contract price and the replacement or cover price as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.

13.4. **LIMITATION ON DAMAGES.** Notwithstanding any provision to the contrary, the parties agree that in no event shall any party or Purchaser be liable to the other for exemplary or punitive damages.

13.5. **GOVERNMENTAL TERMINATION.**

- (a) **Termination for Withdrawal of Authority.** Enterprise Services may suspend or terminate this Master Contract if, during the term hereof, Enterprise Services' procurement authority is withdrawn, reduced, or limited such that Enterprise Services, in its judgment, would lack authority to enter into this Master Contract; *Provided*, however, that such suspension or termination for withdrawal of authority shall only be effective upon twenty (20) days prior written notice; and *Provided further*, that such suspension or termination for withdrawal of authority shall not

relieve any Purchaser from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such suspension or termination for withdrawal of authority, neither Enterprise Services nor any Purchaser shall have any obligation or liability to Contractor.

- (b) Termination for Public Convenience. Enterprise Services, for public convenience, may terminate this Master Contract; *Provided*, however, that such termination for public convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for public convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for public convenience shall not relieve any Purchaser from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, neither Enterprise Services nor any Purchaser shall have any obligation or liability to Contractor.

- 13.6. TERMINATION PROCEDURE. Regardless of basis, in the event of suspension or termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, Contractor shall deliver to Purchasers all goods and/or services that are complete (or with approval from Enterprise Services, substantially complete) and Purchasers shall inspect, accept, and pay for the same in accordance with this Master Contract and the applicable Purchase Order. Unless directed by Enterprise Services to the contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.

14. GENERAL PROVISIONS.

- 14.1. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Master Contract.
- 14.2. COMPLIANCE WITH LAW. Contractor shall comply with all applicable law.
- 14.3. INTEGRATED AGREEMENT. This Master Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 14.4. AMENDMENT OR MODIFICATION. Except as set forth herein, this Master Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 14.5. AUTHORITY. Each party to this Master Contract, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Master Contract and that its execution, delivery, and performance of this Master Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 14.6. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Master Contract. Neither party is an agent of the other party nor authorized to obligate it.
- 14.7. ASSIGNMENT. Contractor may not assign its rights under this Master Contract without Enterprise Services' prior written consent and Enterprise Services may consider any

attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to Enterprise Services within thirty (30) days, Contractor may assign its rights under this Master Contract in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Master Contract notwithstanding any prior assignment of its rights.

- 14.8. **BINDING EFFECT; SUCCESSORS & ASSIGNS.** This Master Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 14.9. **PUBLIC INFORMATION.** This Master Contract and all related documents are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56.
- 14.10. **ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS/SERVICES.** Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any goods and/or services provided in Washington for the purpose of carrying out the Contractor's obligations under this Master Contract, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.
- 14.11. **FEDERAL FUNDS.** To the extent that any Purchaser uses federal funds to purchase Fresh Bakery Items pursuant to this Master Contract, such Purchaser shall specify, with its order, any applicable requirement or certification that must be satisfied by Contractor at the time the order is placed or upon delivery. The Competitive Solicitation that resulted in this Master Contract is has not placed unreasonable requirements on firms to qualify for business or restricted competition as set forth in 2 CFR Part 200.319(a)(1) and 7 CFR 3016.36(c)(1)(i). Competitive procurement cost and price analysis were conducted in accordance with 2 CFR Part 200.323.
- 14.12. **SEVERABILITY.** If any provision of this Master Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Master Contract, and to this end the provisions of this Master Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Master Contract.
- 14.13. **WAIVER.** Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Master Contract, nor shall any purported oral modification or rescission of this Master Contract by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.
- 14.14. **SURVIVAL.** All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Master Contract shall survive and remain in effect following the expiration or termination of this Master Contract, *Provided*, however, that


nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.

- 14.15. **GOVERNING LAW.** The validity, construction, performance, and enforcement of this Master Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules.
- 14.16. **JURISDICTION & VENUE.** In the event that any action is brought to enforce any provision of this Master Contract, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.
- 14.17. **ATTORNEYS' FEES.** Should any legal action or proceeding be commenced by either party in order to enforce this Master Contract or any provision hereof, or in connection with any alleged dispute, breach, default, or misrepresentation in connection with any provision herein contained, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including costs of pursuing or defending any legal action, including, without limitation, any appeal, discovery, or negotiation and preparation of settlement arrangements, in addition to such other relief as may be granted.
- 14.18. **FAIR CONSTRUCTION & INTERPRETATION.** The provisions of this Master Contract shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Master Contract. Each party hereto and its counsel has reviewed and revised this Master Contract and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Master Contract. Each term and provision of this Master Contract to be performed by either party shall be construed to be both a covenant and a condition.
- 14.19. **FURTHER ASSURANCES.** In addition to the actions specifically mentioned in this Master Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Master Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Master Contract.
- 14.20. **EXHIBITS.** All exhibits referred to herein are deemed to be incorporated in this Master Contract in their entirety.
- 14.21. **CAPTIONS & HEADINGS.** The captions and headings in this Master Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Master Contract nor the meaning of any provisions hereof.
- 14.22. **ELECTRONIC SIGNATURES.** A signed copy of this Master Contract or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Master Contract or such other ancillary agreement for all purposes.


14.23. COUNTERPARTS. This Master Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Master Contract at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Master Contract.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
Department of Enterprise Services

By: 
Elena McGrew
Its: Statewide Enterprise Procurement
Manager

UNITED STATES BAKERY DBA FRANZ FAMILY BAKERIES,
an Oregon company

By: 
Todd Fultz
Its: Account Executive

INCLUDED GOODS/SERVICES
FRESH BAKERY ITEMS

This Master Contract is for the sale and delivery to Purchaser of Fresh Bakery Items. Fresh Bakery Items must:

- Be fresh, just baked, and shall have a shelf life which is standard to the industry for that specific product;
- Comply with the grain requirements of the National School Lunch Program and National School Breakfast Program as published by the USDA in 7 CFR 210.10 and 220.8 and all associated USDA policy memorandums; and
- For Fresh Bakery Items used to prepare school meals, such items must contain zero grams of trans-fat (less than 0.5 grams) per serving.

Fresh Bakery Items do NOT include products that:

- Are frozen and thawed;
- Have a “short” shelf life;
- Are ‘day old’ items – i.e., products baked more than forty-eight hours before delivery to Purchaser; or
- Are stale, distressed, damaged, or removed from retail accounts.

For this Master Contract, Fresh Bakery Items may include Contractor’s full catalog of fresh baked items offered for retail sale including, but not limited to, the following:

- Bars
- Breads (bagels, buns, rolls, biscuits and loaf breads)
- Cookies
- Desserts (cakes, cheesecakes and pies)
- Muffins
- Snack cakes
- Sweet goods (doughnuts, Danish, sweet rolls, cinnamon rolls and coffee cake)
- Tortillas

PRICES FOR GOODS/SERVICES

Product Description	Unit of Issue	Pack Size	Product Number	Delivered Unit Price to Western WA	Delivered Unit Price to Eastern WA
4" Ham Bun 100% Whole Wheat 12 Pack	Pkg	12	74329	\$1.84	\$1.74
Plain Bag 100% Whole Wheat Loaf 23 Slice	Loaf	1	71690	\$1.46	\$1.18
Plain Bag 100% Whole Wheat Cluster Hot 8 Pk	Pkg	8	75014	\$1.72	\$1.83
Plain Bag 100% Whole Wheat Cluster Ham 8 Pk	Pkg	8	74106	\$1.26	\$1.09
Plain Bag 100% Whole Wheat Bagel 6 Pk	Pkg	6	76344	\$1.87	\$1.87
Plain Bag 100% Whole Wheat English Muffin 6 Pk	Pkg	6	76096	\$1.23	\$1.06
Franz 100% Round Top Loaf 16oz	Pkg	1	70017	\$1.15	\$1.10
Plain Bag 51% Whole Wheat Round Top 24oz Loaf	Loaf	1	71691	\$1.46	\$1.18
Plain Bag 51% Whole Wheat Cluster Ham 8 Pk	Pkg	8	74107	\$1.24	\$1.08
Franz Restaurant Wheat 20oz Loaf	Loaf	1	80996	\$0.94	\$1.11
Franz Restaurant White 20oz Loaf	Loaf	1	80994	\$0.94	\$1.18
Franz Extra Crisp White English Muffin 6 Pk	Pkg	6	70600	\$0.92	\$1.06
Franz Hoagie Sandwich Roll 6 Pk	Pkg	6	70408	\$1.15	\$1.34
Franz Texas Toast 3/4 Sliced Thick Cut 18 Slice	Loaf	1	70008	\$1.04	\$1.23
Franz 4" Plain Ham Bun 12 Pk	Pkg	12	70421	\$1.46	\$1.59
Franz Raisin Bread Loaf	Pkg	1	70132	\$3.26	\$3.26
Franz Plain Bagel 6 Pk	Pkg	6	70631	\$1.46	\$1.87
Franz Plain Cluster Hot Dog Bun 8 Pack	Pkg	8	70402	\$0.94	\$1.11
Franz White Tea Roll 12 Pack	Pkg	12	70514	\$1.77	\$1.98
Franz Plain 4.5" Ham Bun 12 Pack	Pkg	12	70423	\$1.88	\$1.99

Plain Bag Plain Hoagy 6 Pack Hinged	Pkg	6	74979	\$1.15	\$1.34
Franz Big White	Loaf	21 slice	70001	\$1.37	\$1.37
100% Wheat Round Top	Loaf	21 slice	70003	\$1.51	\$1.51
Sliced French Loaf	Loaf	16 slice	70301	\$2.69	\$2.69
Soft French 3x5 Rolls 6pk	Pack	6	70305	\$2.59	\$2.59
Breadsticks 8pk	Pack	8	70308	\$2.21	\$2.21
Garlic Foil French	Loaf	1	70341	\$2.92	\$2.92
Cluster Hamburger Buns 8pk	Pack	8	70401	\$1.12	\$1.12
4.5" Sesame Buns 8pk	Pack	8	70411	\$3.18	\$3.18
4.5" Onion Buns 8pk	Pack	8	70413	\$2.69	\$2.69
Gluten Free Hamburger Buns 4pk	Pack	4	70420	\$5.38	\$5.38
Gluten Free Hot Dog Buns 4pk	Pack	4	70428	\$5.38	\$5.38
Hawaiian Tea Rolls 12pk	Pack	12	70516	\$2.09	\$2.09
Onion Bagels 6pk	Pack	6	70632	\$1.43	\$1.43
Blueberry Bagels 6pk	Pack	6	70633	\$1.90	\$1.90
Wheat Pullman Bread	Loaf	26 slice	71727	\$1.29	\$1.29
Long French Loaf	Loaf	1	73520	\$2.49	\$2.49
Svenhards 30ct Variety Pack Pastry	Pack	30	76995	\$15.55	\$15.55
Western Farms White Bread	Loaf	21 slice	78569	\$1.18	\$1.18
Western Farms Wheat Bread	Loaf	21 slice	78570	\$1.18	\$1.18
Western Farms Deli Rye	Loaf	17 slice	78639	\$2.09	\$2.09
Western Farms Deli Sour	Loaf	17 slice	78640	\$2.09	\$2.09
Western Farms Deli White	Loaf	17 slice	78626	\$2.09	\$2.09
Western Farms Deli Stone Ground 100% Wheat	Loaf	17 slice	78620	\$2.49	\$2.09
32 oz. Deli Sourdough	Loaf	18	82573	\$2.49	\$2.49
32 oz. Deli Honey Wheat	Loaf	18	82574	\$2.49	\$2.49
32 oz. Deli Old Fashioned White	Loaf	18	82575	\$2.49	\$2.49
32 oz. Deli Caraway Rye	Loaf	18	82576	\$2.49	\$2.49
Sandwich Caraway Rye Loaf	Loaf	25 slice	82640	\$3.39	\$3.39
12" White Sub Rolls 6pk	Pack	6	82808	\$2.85	\$2.85

INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Master Contract, Contractor shall possess and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability insurance (and, if necessary, commercial umbrella liability insurance) covering bodily injury, property damage, products/completed operations, personal injury, and advertising injury liability on an 'occurrence form' that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) under the most recent version of form CG 00 01 in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.
 - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
 - c. **EMPLOYERS' LIABILITY (STOP GAP) INSURANCE.** Employers' liability insurance (and, if necessary, commercial umbrella liability insurance) with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.
 - d. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** Commercial automobile liability insurance covering the ownership, maintenance, and/or use of all owned/leased, non-owned, and hired vehicles used in the performance of the Master Contract, with limits of not less than \$1,000,000 per accident, combined single limit for bodily injury and property damage liability. Coverage shall be provided on Insurance Services Office (ISO) form number CA 0001 or an equivalent. The required limits can be satisfied by any combination of primary, umbrella, or excess policy.

The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** Commercial General Liability, Commercial Automobile Liability, and Pollution Liability Insurance shall include the State of Washington and all authorized Purchasers (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.

4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Master Contract, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Master Contract, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall furnish to Enterprise Services an updated or renewed certificate of insurance, satisfactory to Enterprise Services, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. **All policies and certificates of insurance shall include the Master Contract number stated on the cover of this Master Contract.** All certificates of Insurance and any related insurance documents shall be delivered to Enterprise Services by U.S. mail, postage prepaid, or sent via email, and shall be sent to the address or email address set forth below or to such other address or email address as Enterprise Services may specify in writing:

US Mail: Contracts & Procurement – Master Contract Insurance
Certificate
Master Contract No. 01520 – Fresh Bakery Items
Attn: Clayton Long
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-141

Email: DESContractsTeamCedar@des.wa.gov

Note: For Email notice, the Email Subject line must state:
**Master Contract Insurance Certificate – Master Contract
No. 01520 – Fresh Bakery Items**

5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchaser. All insurance or self-insurance of the State of Washington and/or Purchasers shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Purchaser for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to Enterprise Services. Failure to

provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Master Contract number stated on the cover of this Master Contract.

9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Master Contract.